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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,726	02/09/2004	Shirley Dusenberry	209.01-P-USA	3406
30040	7590	06/30/2004	EXAMINER	
MICHAEL A. SHIPPEY, PH. D. 4848 LAKEVIEW AVENUE SUITE B YORBA LINDA, CA 92886			LE, TAN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/775,726	DUSENBERRY, SHIRLEY	
	Examiner	Art Unit	
	Tan Le	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/09/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the first office action for serial number 10/755,726. This application contains 20 claims numbered 1-20.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10, drawn to a holder for name cards, classified in class 248, subclass 215.
 - II. Claims 11-20, drawn to a vase formed in the substantial shape of a flower, classified in class 53, subclass 558.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product such as a vase formed in the shape of a flower with an open top where the top is flattened out or that the product as claimed can be made by another and materially different apparatus such as a container having a neck, enclosed at bottom and the top is flattened out.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Dr. Michael A. Shippey on 6/21/2004, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

An examination as follows:

5. The IDS submitted on 2/09/04 has been considered.

6. Claims 2-4, each recites the term "said holder". This should be changed to -- said container -- to be more accurate and consistent with drawings. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 3, each recites the limitation "the edge" (both in line 3). There is insufficient antecedent basis for this limitation in the claim.

Claims 4 and 6, each recites the limitation "the top surface" (both in line 2). There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the neck " in 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,381,623 to Koistinent.

Regarding claims 1-4, Koistinent discloses a water funnel and card holder (Fig. 2) comprising: a small, lightweight, open top container (12); attachment means (22) capable of attaching the container to an edge of a thin walled vessel in a stable upright position; and a holding means (20, 30, 32) capable of holding a card in an upright position on the container; the attachment means comprising of tab (22) fixedly attached to a side of the holder and extending outwardly (36) and downwardly (22) in an inverted J-shape; the tab being permanently or removably attached to the outside of the holder; the holding means also comprising a plurality of tabs (32, 30) arisen vertically from a top surface of the holder.

Regarding claim 5, claim 5 recites the vessel is a drinking glass, but the vessel recites in claim 1 as intended use of the invention rather than a positive limitation in the claim, therefore the examiner has not given any patentable weight.

Regarding claim 6, Koistiment also discloses the holder being constructed in the shape of a flower with a top surface curving horizontally outward in the manner of petals of a flower.

Regarding claim 7, Koistiment also discloses the holder being capable of containing water without leakage and the holder being formed of plastic.

Regarding claims 8-9, the subject matter of claims 8-9 also disclosed by Koistiment as evidently shown on Fig. 3

Claims 1-3, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,825,590 to Cullinane

Regarding claims 1-3, Cullinane discloses a receptacle hanger (Fig. 1 or Fig.9) comprising a small, lightweight, open top container (10); attachment means (14) and a holding means (44, 48) capable of holding a card in an upright position on the container; the attachment means comprising of a tab (44) fixedly attached to a side of the holder and extending outwardly and downwardly in an inverted J-shape; the tab can be permanently or removably attached to the outside of the holder.

Regarding claim 5, this claim recites the vessel as a drinking glass, however the vessel as recited in claim 1 is not a positive limitation, therefore the examiner has not given any patentable weight.

Regarding claim 7, the holder of Cullinane is also capable of containing water without leakage and the holder comprises of plastic (58).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cullinane in view of US Patent no. 5,088,216 to Wasilko.

Cullinane discloses the claimed invention substantially as claimed as discussed above except for a circular grid capable of residing in a horizontal position within a neck of the container.

Wasilko teaches a circular grid (200) capable of residing in a horizontal position within the container for supporting one or more flowers or flower buds via insertion of the stems of flowers or buds into the grid.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a circular grid of Wasilko into the container of Cullinane for the desired purpose of providing a better holding the flowers via insertion of the stems of the flowers or buds into the grid as taught by Wasilko.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4,880,133 to Cullinane

4,418,496 to Koistinen

4,739,582 to Cullinane

6,401,371 to Martorella.

1,566,982 to Shee

2,040,750 to Long


The above patents disclose various types of display holder for cards, flowers and the like.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244.

The examiner can normally be reached on Mon.-Fri. from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le
June 22, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER